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STATE OF OREGON  
DIVISION OF STATE LANDS

Amendment to Waterway Lease ML-7445

Effective June 4, 2001, the following condition is modified in that certain lease between the STATE OF OREGON, acting by and through the Division of State Lands (STATE) and GATX Tank Storage Terminals Corporation, (LESSEE), which is dated and signed on July 10, 1998. All terms of the lease not specifically changed by this modification remain unchanged and in full force.

1. PARTIES

The parties to this Lease are the STATE OF OREGON, acting by and through the Division of State Lands, ("STATE") and GATX Tank Storage Terminals Corporation, ("LESSEE").

Such condition is hereby deleted and in its place is substituted the following condition:

1. PARTIES

The parties to this Lease are the STATE OF OREGON, acting by and through the Division of State Lands ("STATE") and Kinder Morgan Tank Storage Terminals LLC, ("LESSEE").

IN WITNESS WHEREOF the parties have executed this lease AMENDMENT.

STATE OF OREGON  
DIVISION OF STATE LANDS

Stephen H. [Signature]  
Authorized Signature

January 22, 2002  
Date

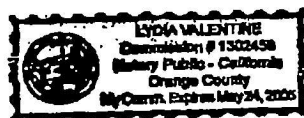
KINDER MORGAN TANK  
STORAGE TERMINALS LLC

J. D. Reynolds [Signature]  
J. D. Reynolds, Manager  
Lands & Right of Way

January 7, 2002  
Date

STATE OF CALIFORNIA )  
 )ss  
County of Orange )

The foregoing instrument was acknowledged before me this 17th day of January, 2002, by J. D. Reynolds (officer or agent of corporation), the Manager of Lands & Right of Way (title of officer or agent) of Kinder Morgan Tank Storage Terminals LLC, a Delaware (state or place of incorporation) corporation, on behalf of corporation.



Lydia Valentine [Signature]  
Signature  
My commission expires: 05-24-05

USEPA SF



1288477

January 11, 2005

When the annual invoice comes in from the Oregon State Lands for Lease ML-7445 send it to:

Kinder Morgan Energy Partners  
5880 NW Helens Road, Building 6  
Portland, OR 97210  
ATTN: Lorraine Swiger

Her telephone number is: (503) 220-1265 and she works with Barbara Clark at the Willbridge Terminal.

**Any area used as a wharf is excluded from this lease.**

### 3. PURPOSE

LESSEE shall have exclusive possession of the Leased Premises for the sole purpose of a spill response boat and boathouse and for no other purpose without prior written consent of STATE. This instrument does not guarantee that any particular use may be made of the Leased Premises. LESSEE should check with appropriate city or county planning department to verify approved uses.

### 4. TERM OF LEASE

The LESSEE, subject to compliance with the terms and provisions of this Lease, shall have and hold the Leased Premises for the purposes stated above from March 1, 1997, through February 28, 2017.

### 5. LEASE PAYMENT

The lease payment to be paid by LESSEE to STATE shall be \$572.00 per year or the amount set by redetermination at any time after the first anniversary date of the Lease. Receipt of the first year's lease payment is hereby acknowledged. "Redetermination" means a rent increase made pursuant to paragraph 6 of this Lease. Lease payments shall be payable annually and shall be due on the 1<sup>st</sup> day of March in advance. Payments shall be sent to the Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310-1337. STATE shall give LESSEE 30 days advance notice of the due date and amount of the lease payment due.

### 6. LEASE PAYMENT INCREASES

Lease payment increases shall be made in accordance with the lease provisions of the Oregon Administrative Rules applying to state-owned submerged and submersible lands which are in effect at the time of redetermination. Lease payment increases may be appealed by the LESSEE. LESSEE must file its appeal in writing within 14 days of the notice of increase. The notice of appeal is to be sent to the attention of the Director, Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310-1337 and must include market data or other information to support the request for review. Upon filing of an appeal, the STATE will schedule an informal hearing before the Director or designee. Neither party to a redetermination appeal is entitled to recover attorney's fees.





LESSEE's responsibility to determine and comply with those and all other requirements.

LESSEE shall use the Leased Premises only in a manner, or for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

**12. TAXES, LIENS, ASSESSMENTS, CHARGES**

LESSEE shall pay before they become delinquent all taxes, assessments, penalties, fines, charges, rates or liens of any nature whatsoever that may be levied, assessed, charged, imposed or claimed on or against the Leased Premises or any improvements or fixtures thereon or appurtenances thereto arising out of LESSEE'S use or occupation of the Leased Premises. If LESSEE fails to pay any such taxes, assessments, penalties, fines, charges, rates or liens, within ten (10) days after notice that such sums are due, STATE may pay such sums. Any such sums paid by STATE shall be reimbursed on demand with interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE until paid.

**13. PREVENTION OF WASTE, DAMAGE AND INJURY**

LESSEE shall exercise reasonable diligence in its operation on and from said Leased Premises; shall carry on all operations hereunder in a good and workmanlike manner having due regard for public safety and the prevention of waste and for the restoration and conservation of said Leased Premises for future use, and shall take all reasonable steps to avoid damage to soil, timber, fish and fish habitat, wildlife and wildlife habitat and water quality of both ground water and surface water; shall make all reasonable efforts to minimize interference with existing navigational and recreational activities and scenic values; shall substantially restore the Leased Premises to its original condition and shall do all things reasonably necessary to minimize erosion.

**14. EXCLUSIVITY**

Subject to the provision of Section 9 (Reservations), the rights and privileges granted under this Lease are exclusive, except that LESSEE shall not unreasonably interfere with the public's right of navigation, commerce, fishing and recreation in the open water areas of the Leased Premises.

**15. PUBLIC SAFETY**

Subject to the provision of Section 14 (Exclusivity), the LESSEE may restrict entry to any portion of the Leased Premises as may be necessary to protect persons and property from harm arising from or in connection with the LESSEE's activities upon the Leased Premises.

**16. ASSIGNMENT OR SUBLEASE**

With respect to any assignment, mortgage, or sublease, the following provisions shall apply:

**16.1 RESTRICTIONS:** Except as provided for in subsection 16.2, LESSEE's interest in the Leased Premises or any part thereof shall not be assigned, mortgaged or subleased, nor shall any right of use of said Leased Premises be conferred on any third person by another means without the prior consent of STATE. Said consent shall not be unreasonably withheld or delayed. This provision shall apply also to all transfers by operation of law. Except as provided in Subsection 16.2, any assignment, or attempted assignment, subletting, or attempted subletting, or grant of right of use, or attempted grant of right of use without such consent, shall be absolutely null and void and shall, at the option of STATE, terminate all rights of the LESSEE under or by virtue of this Lease. STATE may, in its discretion, consent to an assignment or sublease provided the following conditions are satisfied:

- 16.1.1 A fee of \$125 is prepaid to cover administrative costs, and
- 16.1.2 LESSEE has satisfied all conditions of the Lease precedent to assignment or sublease, and
- 16.1.3 LESSEE and its assignee have completed a standard assignment form or new lease form as required by STATE, and have assured the STATE that the assignee or sublessee has the capability to perform on the Lease, and
- 16.1.4 STATE determines that such assignment or sublease is in the best interest of the STATE.

**16.2 PERMITTED ASSIGNMENTS:** The following assignments, mortgages and security interests, and subleases of the LESSEE's interest in the Leased Premises shall be allowed without further STATE approval:

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16.2.1 Subleases and subsubleases of portions of the LESSEE's interest in the Leased Premises, in the ordinary course of LESSEE's business or portions thereof for uses of the Leased Premises approved under this Lease.

16.2.2 Any mortgage(s), trust deed(s) or other encumbrance(s) which LESSEE may cause to attach to LESSEE's interest in the Leased Premises (1) in connection with the acquisition or refinancing(s) of the acquisition of the improvements in, on or about the Leased Premises and (2) in connection with financing and refinancing (a) development, construction, reconstruction, maintenance or repair of improvements on the Leased Premises and (b) operations on or about the Leased Premises. Within ten (10) days of any transfer pursuant to this subsection 16.2.2, LESSEE shall provide STATE the name and business address of any entity obtaining a security interest pursuant to this subsection 16.2.2.

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## 17. ALTERATIONS AND IMPROVEMENTS

LESSEE shall obtain the written consent of STATE prior to making any alterations to the Leased Premises or improvements upon the Leased Premises.

## 18. DEFAULT

18.1 DEFAULT NOTICE AND CURE BY LESSEE: A default by the LESSEE shall occur if any of the following shall occur and if said default shall continue and not be remedied within sixty (60) days after STATE shall have given notice specifying the breach (within ten (10) days for delinquency or failure to pay rent.)

18.1.1 Delinquency or failure to pay rent in the amounts and at the time specified in the Lease.

18.1.2 Failure of LESSEE to comply with any term or condition imposed by the STATE in the Lease.

18.1.3 Failure of LESSEE to use the Leased Premises for the purposes authorized under the terms of the Lease.

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- 18.1.4 LESSEE maintaining a nuisance on the Leased Premises.
- 18.1.5 Insolvency of LESSEE; an assignment by LESSEE for the benefit of creditors; the filing by LESSEE of a voluntary petition in bankruptcy; an adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; the filing of any involuntary petition of bankruptcy and the failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of LESSEE to secure discharge of the attachment or release of the levy of execution within ten (10) days.
- 18.1.6 Failure by LESSEE to remove any lien or encumbrances placed upon the Leased Premises other than a lien or encumbrance on LESSEE's interest permitted by Section 16 of this Lease.
- 18.2 MORTGAGEE PROTECTION PROVISION: Whenever the STATE shall deliver any notice or demand to the LESSEE with respect to any breach or default by the LESSEE in its obligations or covenants under this Lease, the STATE shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Lease at the last address of such holder shown in the records of the STATE. After any default in or breach of the Lease by the LESSEE or its successor in interest, each holder of any mortgage permitted under the Lease shall (insofar as the rights of the STATE are concerned) have the right after the failure of the LESSEE to cure or remedy said default or breach, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the land covered by its mortgage) within sixty (60) days and to add the cost thereof to the mortgage debt and the lien of its mortgage. The mortgage holder's exercise of its option to cure or remedy any default by LESSEE shall not constitute grounds for termination of this Lease by STATE. In the event the holder of any mortgage which LESSEE has caused to attach to LESSEE's interest in the Leased Premises forecloses on the leasehold estate then STATE shall enter into a new lease with that lienholder on the same terms and conditions as this Lease.

**19. LATE PAYMENT PENALTY**

If STATE has not received the full amount of the lease payment due within ten (10) calendar days from the due date, STATE may impose a late payment penalty on the LESSEE in the amount not to exceed five percent (5%) of the overdue payment. The late fee penalty may only be charged once on any payment due. Alternatively, at the STATE's option, a late payment penalty may be charged which is the interest due at the maximum legal rate pursuant to ORS 82.010 on the late payment from the date due until paid.

**20. TERMINATION**

**20.1 TERMINATION UPON LESSEE'S DEFAULT:** In the event of a default by LESSEE, the Lease may be terminated at the option of STATE by thirty (30) days advance notice in writing to LESSEE. In the event the Lease is terminated by either party, all remedies afforded under this Lease in Section 24 herein shall survive such termination. LESSEE shall have thirty (30) days after date of termination to remove all fixtures and property from the Leased Premises. Failure to remove such items within the thirty (30) day period will constitute abandonment by the LESSEE and, subject to the rights of any secured parties having a security interest in such fixtures and property, the STATE shall take title to the property after the expiration of thirty (30) days, in which event STATE may reenter, take possession of the Leased Premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages directly resulting from such reasonable force.

**20.2 STATE'S OPTIONS TO MITIGATE:** Following reentry, STATE may relet the Leased Premises and in that connection make any suitable alteration to the Leased Premises or change the character or use of the Premises but STATE shall not be required to relet for any use or purpose (1) which is different from that specified in the Lease or (2) which STATE may reasonably consider injurious to the Premises or (3) to any LESSEE which STATE may reasonably consider objectionable. STATE may relet all or part of the Leased Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions.

**20.3 DAMAGES RECOVERABLE UPON TERMINATION:** In the event of termination on default, as provided by Section 18 of this Lease, STATE shall be entitled to recover the following amounts as damages:

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- 20.3.1 The loss of reasonable rental value from the date of default until a new lease has been, or with the exercise of reasonable efforts could have been, secured.
- 20.3.2 The reasonable cost of reentry and reletting, including the reasonable and necessary costs of any clean-up, refurbishing, removal of LESSEE's property and fixtures, or any other necessary expense directly resulting from LESSEE's failure to quit the Leased Premises upon termination and to leave them in the required conditions, including reasonable attorneys fees, court costs, and advertising costs.
- 20.3.3 Any excess of the value of the rent and all of LESSEE's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are relet and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

20.4 TERMINATION UPON MUTUAL CONSENT: This Lease may also be terminated by mutual written consent of LESSEE and STATE.

21. DELIVERY OF PREMISES: SURRENDER

In the event the Lease is terminated, or upon expiration, LESSEE shall have thirty (30) days within which to vacate the Leased Premises and shall surrender the Leased Premises in substantially the original condition as of the date of this Lease. STATE may require LESSEE to restore the Leased Premises to the original condition as of the date of this Lease or STATE may itself restore the Leased Premises and recover its reasonable and necessary restoration costs from LESSEE.

22. FIXTURES AND PERSONAL PROPERTY

All fixtures and personal property placed upon the Leased Premises during the term shall, upon expiration or termination of the Lease, become the property of STATE if not removed by LESSEE within thirty (30) days as provided in Subsection 20.1 and if not subject to the rights of any secured party having a security interest in such fixtures or personal property. LESSEE shall repair any physical damage resulting from such removal. If LESSEE fails to remove such fixtures, this shall







**25. RIGHT TO SUE MORE THAN ONCE**

STATE may sue periodically to recover damages for the period corresponding to the remainder of the lease term and no action for damages shall bar later action for damages subsequently accruing.

**26. REMEDIES CUMULATIVE**

The remedies contained in this Lease shall be in addition to and shall not exclude any other remedy available at law or in equity, and exercise by either party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same default or breach by the other party.

**27. HAZARDOUS WASTE**

LESSEE shall refrain from storing on, or discharging from or onto, the Lease Premises any hazardous wastes or toxic substances as defined in 42 USC § 9601-9657, except as otherwise permitted by law.

**28. INDEMNIFICATION**

LESSEE agrees to indemnify, defend and hold STATE, its officers, employees, and its agents harmless from any and all damages, claims, actions, costs and expenses arising in whole or in part out of LESSEE'S acts or omissions related to this Lease. STATE shall have no liability to LESSEE'S for any loss or damage caused by third parties or by any condition of the LEASED PREMISES.

**29. INSURANCE COVERAGES**

**29.1 WORKERS' COMPENSATION:** The LESSEE, its SUBLESSEES, if any, and all employers providing work, labor or materials under this Lease are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers.

**29.2 COMMERCIAL GENERAL LIABILITY:** LESSEE shall obtain, at LESSEE's expense, and keep in effect during the term of this Lease, comprehensive or commercial general liability insurance covering bodily injury and property damage. This insurance shall include

personal injury coverage, contractual liability coverage for the indemnity provided under this Lease and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Each annual aggregate limit shall not be less than \$2,000,000, when applicable.

29.3 ADDITIONAL INSURED: The liability insurance coverages, except Professional Liability if included, required for performance of the Lease shall include the State of Oregon, the Division of State Lands and their sections, officers and employees as additional insureds but only with respect to the LESSEE's activities to be performed under this Lease.

29.4 NOTICE OF CANCELLATION OR CHANGE: There shall be no cancellation, material change, potential exhaustion or aggregate limits or intent not to renew insurance coverage(s) without 30 days' written notice from the LESSEE or its insurer(s) to the Division of State Lands. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage(s) provided to the State of Oregon, its Division of State Lands and their sections, officers and employees.

29.5 CERTIFICATE(S) OF INSURANCE: As evidence of the insurance coverages required by this Lease, the LESSEE shall furnish certificate(s) of insurance to the Division of State Lands prior to its issuance of a Lease. The certificate(s) will specify all of the parties who are additional insured (or loss payees). Insurance coverages required under this Lease shall be obtained from acceptable insurance companies or entities. The LESSEE shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

### 30. ATTORNEY FEES

If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action.

### 31. MODIFICATION

This agreement may be changed, altered or amended only by mutual written consent of the parties.

32. MERGER

This Lease constitutes the entire agreement between the parties, and no oral statement, representation or agreement not herein expressed shall be binding upon any party.

33. NON WAIVER

Waiver by either party of strict performance of any term of this Lease on any occasion shall not be construed as a waiver nor prejudice either party's right to require strict performance of the same provision in the future or of any other provision.

34. PARTNERSHIP

STATE is not a partner nor a joint venturer with LESSEE in connection with the business carried on under this Lease and shall have no obligation with respect to LESSEE's debts or other liabilities.

35. SEWAGE DISPOSAL AND MARINE SANITATION DEVICES

If LESSEE operates a commercial marina LESSEE shall comply with the State of Oregon Department of Environmental Quality and State Marine Board Guidelines for Sewage Collection and Disposal for On-Water Boat and Floating Structures.

36. NOTICES

Any notices required or permitted under this Lease shall be in writing and deemed given three (3) days after deposited, postage prepaid, in the United States mail as regular mail and directed to the address provided below or to such other address as may be specified from time to time by either of the parties in writing.

For STATE:

DIVISION OF STATE LANDS  
775 Summer Street NE  
Salem, OR 97310

For LESSEE:

Marcus Wilmer, Terminal Superintendent  
Name (Print)

P.O. Box 83325  
Current Mailing Address

Portland, OR 97283  
City State Zip

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GATX Tank Storage Terminal Corp.

**37. EXHIBITS**

All exhibits hereto are expressly incorporated herein by reference and made a part hereof. IN WITNESS WHEREOF the parties have executed this Lease,

LESSEE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

STATE OF )

) ss

County of )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_, 19\_\_  
by \_\_\_\_\_ (officer or agent of corporation),  
the \_\_\_\_\_ (title of officer or agent) of \_\_\_\_\_  
Corporation, a \_\_\_\_\_ (state or place  
of incorporation) corporation, on behalf of the corporation.

\_\_\_\_\_  
Signature

My Commission Expires \_\_\_\_, 19\_\_

STATE OF OREGON, DIVISION OF  
STATE LANDS

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

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GATX Tank Storage Terminal Corp

THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY

MULTNOMAH COUNTY  
1" = 200'

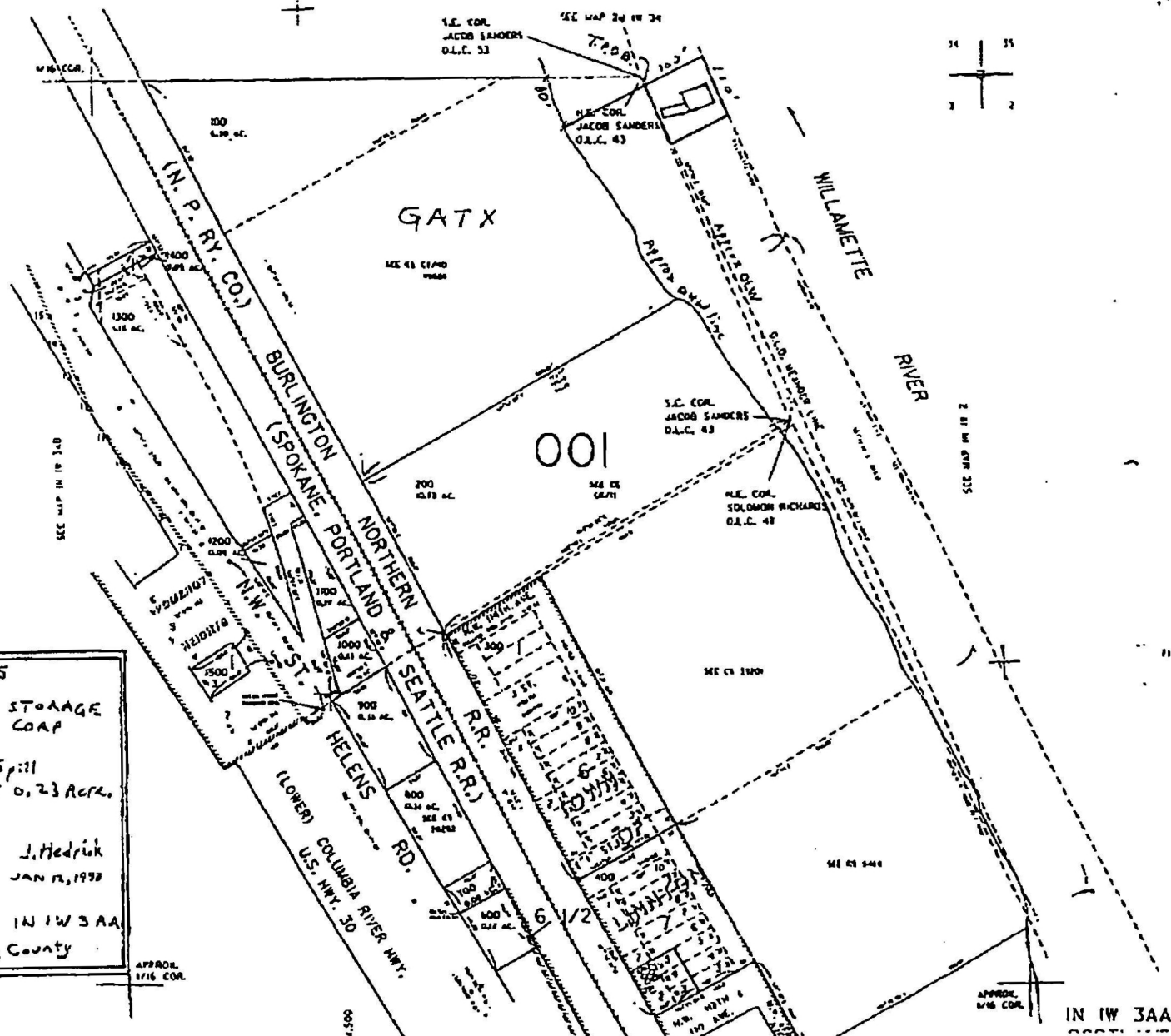
PORTLAND

APR-24-2001 TUE 12:35 PM GATX TERMINALS

HA Juv C.O.O.O.O.O.O.O.C

SCALE 1:2400  
0 100 200  
FEET  
0 100 200  
METERS

ML 7445  
GATX TANK STORAGE  
TERMINALS COOP  
Boathouse for Spill  
Response Boat 0.23 Acre.  
1" = 200'  
N  
W E J. Hedrick  
JAN 12, 1998  
Assessors Map IN IW 3AA  
Multnomah County



IN IW 3AA